

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

BRENDA BRADY, on behalf of herself
and all others similarly situated,

Case No. 2:22-cv-00164-ART-NJK

Plaintiff,

ORDER

vs.

CAPTIONCALL LLC; DOES 1 through 50; inclusive,

Defendant.

At the Final Fairness Hearing held on January 30, 2025, the Court expressed concerns about the reversionary aspect of the parties' proposed class action settlement, considering the Ninth Circuit's concerns with reversionary clauses in class action settlements. *See Roes, 1-2 v. SFBSC Mgt., LLC*, 944 F.3d 1035, 1058 (9th Cir. 2019) (while not disallowed outright, reversionary clauses are generally disfavored because they create perverse incentives); *see also In re Volkswagen "Clean Diesel" Mktg., Sales Practices, and Products Liab. Litig.*, 895 F.3d 597, 612 (9th Cir. 2018) (while a reversion clause can be benign, a district court approving of a class settlement containing such a clause "must explain why the reversionary component of a settlement negotiated before certification is consistent with proper dealing"). Here, the parties' motion for final approval of the class settlement did not explain why a reversion is appropriate.

The reversion of the unclaimed net settlement fund to Defendant is particularly concerning to the Court given the short (30 day) claim period and large (60%) portion of the net settlement fund which would be reverted to Defendant. See *Millan v. Cascade Water Servs., Inc.*, 310 F.R.D. 593, 601, 612

1 (E.D. Cal. 2015) (rejecting wage-and-hour settlement with proposed 30%
2 reversion to defendant and collecting similar cases); *Roes*, 944 F.3d at 1047–48
3 (reversing approval partially because notice did not adequately account for
4 reversionary aspect of settlement funds).

5 At the hearing, Plaintiff's counsel proposed addressing the Court's
6 concerns by providing another opportunity for class members to submit claims.
7 The parties are ordered to file a status report within 14 days of this order to
8 inform the Court of their plans to address the Court's concern.

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10 Dated this 31st day of January, 2025

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14 ANNE R. TRAUM
15 UNITED STATES DISTRICT JUDGE
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